

# TORT AND COMPENSATION LAW

## CASES AND MATERIALS

Marshall S. Shapo

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*American Casebook Series*



Cases and Materials  
on  
**TORT AND COMPENSATION LAW**

By  
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### CREDITORS' RIGHTS

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### DECEDENTS ESTATES

- Mennell's California Cases, 566 pages, 1973.  
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- Black's, one volume.  
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- Clark's Cases on Domestic Relations, 2nd Ed., 918 pages, 1974.  
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### DRUG ABUSE

- Uelman and Haddox Cases on Drug Abuse Law, 564 pages, 1974.

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- Morris' Cases on the Constitution and American Education, 833 pages, 1974.

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- Currie's Cases and Materials on Pollution, 715 pages, 1975.  
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Hanks, Tarlock and Hanks Cases on Environmental Law and Policy, 1242 pages, 1974.

### EQUITY

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### FUTURE INTERESTS

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### HOUSING AND URBAN DEVELOPMENT

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Sovern's Cases on Racial Discrimination in Employment, 2nd Ed., Pamphlet reprint from Cooper et al. Law and Poverty, 2nd Ed., 167 pages, 1973.  
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### LAND USE

- Beuscher and Wright's Cases on Land Use, 788 pages, 1969.  
Hagman's Cases on Public Planning and Control of Urban and Land Development, 1208 pages, 1973.  
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### OIL AND GAS

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### TRIAL AND APPELLATE PRACTICE

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- Malone, Plant and Little's Cases on the Employment Relation, 1055 pages, 1974.

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## PREFACE

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This is a "torts book," and is designed primarily for use in introductory torts courses. Its primary mission, therefore, is to present materials for teaching traditional torts, with substantial coverage of practically all subject areas that are taught by most torts teachers. In fulfillment of this mission, the book adds to basic tort doctrine a blend of relevant materials from statutory compensation and prevention schemes, both enacted and proposed, that deal with personal injuries.

Torts teachers have always approached their work with a special pride and verve, and it is in that spirit that I have tried to capture the richness of a tradition that has produced some of the most compelling literature of legal scholarship, and that now is undergoing an extraordinary renaissance. Responsively to the demands of that task, I have aimed to include instructive materials representing tort history and comparative doctrine, as well as sources that illustrate the emerging issues of economic theory and behavioral analysis that increasingly will confront lawyers into the next century. At once, I have utilized material that deals with the practical problems of settlement and advocacy faced by lawyers dealing with the unruly reality of litigation. Above all, I have tried to present cases intrinsically interesting to study and to teach, with both a legal tension and human interest that matches the devotion of the torts aficionado to his or her subject. I have employed many new cases and materials, including several very recent judicial decisions, but I have not sacrificed the very greatest classics, and my standard has remained, will it teach? In selecting this material, I have tried to capture the throb of a nation that has stamped this body of law so distinctively with its industrial development, its parallel concerns with progress and justice, and the compassion that fuses a special intangible into this tort jurisprudence.

Torts is, I think, the most exciting area of private law today as well its best gateway to training for analysis of public policy. In this belief, beyond my concern with the primary mission, I have endeavored to introduce some special strands of analogy for which it seems that Torts is the logical vehicle to introduce other forms of legal analysis and new modes of policy training. Thus, the materials occasionally venture into the borderland area of the Constitution, a territory with which an increasing number of areas of tort and compensation law now relate in a symbiotic way that demands further

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investigation. By providing perspective on torts which are also deprivations of civil rights, this approach develops a broader meaning in the law governing personal injury compensation. Partly in this connection, I have presented a concept of misuse and abuse of power as an organizing vehicle for a group of topics that are standard torts fare, and which can also be taught traditionally from these materials. In like fashion, I have also sought to outline the framework of social welfare legislation and litigation that necessarily provides a backdrop for the study and practice of tort law. For those teachers who prefer a traditional course, this framework is pedagogically separable, but I believe it provides an important dimension in a day of increased concern with compensation plans. Collaterally, I have attempted to introduce the great frontier of science, with its ultimate inner frontier of the illimitable mysteries of mental life, for which proof in tort cases is a paradigm, and theories of culpability and duty furnish numerous analogues for policy formulation. Here, I visualize that the "kind of analysis that Torts has always taught the best" provides elementary tools for the training of policy makers as well as the education of attorneys playing more traditional lawyer roles.

I have observed the following conventions in the mechanics of editing: Omitted citations, like all other omitted materials, are indicated by asterisk-ellipses. Many footnotes in cases and secondary works are excised without indication. Where footnotes appear to judicial decisions and secondary sources, they are the author's unless otherwise indicated, and are numbered as in the original. My footnotes in these sources are indicated by lower case letters.

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